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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE EIGHTH INSTALMENT OF "E3" CLAIMS

GE.99-66157

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning eighteen claims included in the eighth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact been incurred by a given claimant. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the eighth instalment

4. On 27 January 1999, the Panel issued the procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to

classify any of the claims as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 27 January 1999 pursuant to article 38(c) of the Rules.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-fifth report of the Executive Secretary issued on 13 October 1998 in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

8. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) Arthur Erickson Associates Ltd., a corporation organized under the laws of Canada, which seeks compensation in the amount of US$187,235;

(b) General Arab Contracting Company, a public sector enterprise organized under the laws of the Arab Republic of Egypt, which seeks compensation in the amount of US$362,716;

(c) General Nile Company for Contractings, a publicly owned company organized under the laws of the Arab Republic of Egypt, which seeks compensation in the amount of US$257,867;

(d) BRL (Compagnie Nationale D'Aménagement de la Région du Bas-Rhône et du Languedoc), a corporation organized under the laws of the Republic of France, which seeks compensation in the amount of US$442,917;

(e) SODETEG S.A., a corporation organized under the laws of the Republic of France, which seeks compensation in the amount of US$2,866,691;

(f) J.M. Voith, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the amount of US$2,927,646;

(g) MCK Maschinenbau GmbH & Co. KG, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the amount of US$561,478;

(h) Salzgitter Anlagenbau, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the amount of US$3,424,117;

(i) Weidleplan Consulting GmbH, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the amount of US$305,993;

(j) Asia Foundations & Constructions Ltd., a corporation organized under the laws of India, which seeks compensation in the amount of US$3,665,427;

(k) Syndicate Engineering Co. (Bhilai) Private Ltd., a corporation organized under the laws of India, which seeks compensation in the amount of US$722,186;

(l) Driplex Water Engineering (International) Limited, a corporation organized under the laws of India, which seeks compensation in the amount of US$754,000;

(m) Recondo Limited, a corporation organized under the laws of India, which seeks compensation in the amount of US$2,540,000;

(n) Triveni Structurals Ltd., a corporation organized under the laws of India, which seeks compensation in the amount of US$1,400,964;

(o) Aurora Engineering, a partnership registered under the laws of India, which seeks compensation in the amount of US$9,200,142;

(p) Società Tecnica Internazionale SOTECNI S.p.A., a corporation organized under the laws of Italy, which seeks compensation in the amount of US$845,287;

(q) RO "BIM" Sv. Nikole, a state owned enterprise organized under the laws of the Republic of Macedonia, which seeks compensation in the amount of US$736,505; and

(r) Sheppard Robson, a partnership organized under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of US$1,353,692.

II. LEGAL FRAMEWORK

A. Applicable law

9. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

10. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1998/R.33) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The "arising prior to" clause

11. In its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

12. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

13. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

14. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the

breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

15. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

16. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In

order to establish with "reasonable certainty" a loss of profit claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected for the project.

F. Date of loss

17. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

18. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

19. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, on 2 August 1990.

H. Currency exchange rate

20. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

21. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

22. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United

Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

I. Evacuation losses

23. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

24. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

25. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recomendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

26. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

27. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within the evidence submitted.

28. The Panel considered claim-specific reports prepared by the Panel's expert consultants. These reports include, but are not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

K. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "claim development letter"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. The recommendations of the Panel are set forth below.

III. CLAIM OF ARTHUR ERICKSON ASSOCIATES LTD.

33. Arthur Erickson Associates Ltd. ("Arthur Erickson") is a Canadian private limited company that is involved in supplying architectural, urban design and town planning services. Arthur Erickson seeks compensation in the amount of US$187,235 for contract losses.

Table 1. ARTHUR ERICKSON'S CLAIM

Claim element	Claim amount (US$)
Contract losses	187,235
Total	187,235

A. Contract losses

1. Facts and contentions

34. The stated losses relate to services provided to the Amanat al Assima on the Abu Nuwas Conservation/Development Project, a major urban design and planning study in Central Baghdad. Arthur Erickson seeks compensation in the amount of US$187,235 for unpaid invoices in respect of professional services provided and expenses incurred on the project. Arthur Erickson stated that it completed the provision of services on the project in 1983 and the Iraqi employer approved payment of this amount on 9 June 1983.

2. Analysis and valuation

35. The Panel finds that the performance that created the debt in question was completed by 1983.

36. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that the contract losses stated by Arthur Erickson relate entirely to work that was performed prior to 2 May 1990.

37. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

38. The Panel finds that Arthur Erickson did not submit sufficient evidence to support its claim for contract losses. The only evidence Arthur Erickson provided is two English translations of a transfer instruction dated 9 January 1984 and issued by the Iraqi employer to the Central Bank of Iraq for the payment of the claimed amount to Arthur Erickson. Arthur Erickson did not provide copies of the contract and copies of applications for payment, approved payment certificates, interim certificates, progress reports, invoices and payments received in support of its asserted losses.

3. Recommendation

39. The Panel recommends no compensation for contract losses.

B. Recommendation for Arthur Erickson

Table 2. RECOMMENDED COMPENSATION FOR ARTHUR ERICKSON

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract loss	187,235	nil
Total	187,235	nil

40. Based on its findings regarding Arthur Erickson's claim, the Panel recommends no compensation.

IV. CLAIM OF GENERAL ARAB CONTRACTING CO.

41. General Arab Contracting Co. ("General Arab") is an Egyptian public sector company engaged in the provision of construction services. General Arab seeks compensation in the amount of US$362,716 for the loss of the Iraqi dinar balance in its accounts with the Al-Rashid Bank in Baghdad and interest. This amount takes into account additional interest in the amount of US$154,197 sought by General Arab in its reply to the claim development letter.

Table 3. GENERAL ARAB'S CLAIM

Claim element	Claim amount (US$)
Iraqi Bank accounts	89,123
Interest	273,593
Total	362,716

A. Iraqi bank accounts

42. General Arab seeks compensation of US$89,123 for the loss of its accounts with two branches of the Al-Rashid Bank. General Arab held ID133 with the main branch in Account no. 31293 and ID27,641 with the Arkhita branch in Account no. 8801. General Arab stated that these amounts were convertible to US dollars, "according to the approval of the concerned contracting parties at the official rate in the amount of 3.208889 American Dollars per Iraqi Dinar".

43. General Arab provided copies of balance statements for account number 31293 which recorded a credit balance of ID132.962 on 28 August 1988 and for account with Al-Rashid Bank which recorded a balance of ID27,722.922 on 22 February 1990. General Arab also submitted two letters dated 29 February 1988 and 14 January 1990 sent by the Iraqi Ministry of Housing and Construction to the Central Bank of Iraq which authorized the transfer of various amounts for completed projects to the General Arab's accounts with the National Bank of Kuwait and Al-Rashid Bank respectively. Finally, General Arab also submitted a letter sent by the Central Bank of Iraq to Al-Rashid Bank in which the Central Bank informs the latter that it has "no objection - as far as concerning the transfer abroad - against your transferring the equivalent in U.S. dollars of the amount of Iraqi Dinars 18000 (only eighteen thousand Iraqi Dinars), for the account of the Arab Contracting Company/Egyptian, representing the amount of the final payment

for the construction Project of the Police Warehouses Directorate - Second and Third Phases."

44. The Panel finds that General Arab has proved the existence of the two accounts with Al-Rashid Bank. General Arab also submitted evidence that would indicate that Al-Rashid Bank and the Central Bank of Iraq were authorized to transfer the United States dollar equivalent of various Iraqi dinar amounts abroad to the account of General Arab. However, the amounts authorized for transfer do not match the amount of ID27,773.884 which is the amount General Arab stated it held in the accounts and for which it seeks compensation. Further, General Arab submitted no evidence that the transfers were prevented by Iraq's invasion and occupation of Kuwait. Finally, General Arab did not demonstrate that the accounts are no longer in existence or that it has been denied access to the funds.

45. In addition, the Panel finds that General Arab did not explain the difference between the United States dollar amounts authorized for transfer out of Iraq and the claimed amount. Accordingly, General Arab did not demonstrate how the transfer was prevented by Iraq's invasion and occupation of Kuwait.

46. The Panel recommends no compensation for loss of funds in Iraqi bank accounts.

B. Interest

47. As the Panel recommends no compensation for the loss of funds in Iraqi bank accounts, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for General Arab Contracting Co.

Table 4. RECOMMENDED COMPENSATION FOR GENERAL ARAB CONTRACTING CO.

Claim element	Claim amount US$)	Recommended compensation (US$)
Iraqi Bank accounts	89,123	nil
Interest	273,593	nil
Total	362,716	nil

48. Based on its findings regarding General Arab's claim, the Panel recommends no compensation.

V. CLAIM OF GENERAL NILE CO. FOR CONTRACTINGS

49. General Nile Co. For Contractings ("General Nile"), an Egyptian company, submitted only the category "E" claim form, a statement of claim and untranslated documents in support of its stated losses. General Nile seeks compensation in the amount of US$257,867 for losses relating to its current account with the Al-Raifidin Bank and interest.

50. On 1 July 1998, General Nile was sent a notification under article 15 of the Rules requesting it to comply with the formal requirements for filing a claim. General Nile was requested to reply on or before 31 December 1998. General Nile did not submit a reply. On 6 January 1999, General Nile was sent a formal notification of the deficiencies of its claim as filed. The deadline for General Nile to reply was 5 March 1999. General Nile did not reply.

51. On 16 July 1998, General Nile was sent a claim development letter in which it was informed that further information and documentation was required for the Panel to decide whether the claim is eligible for compensation. General Nile was requested to submit a reply on or before 16 November 1998. General Nile did not reply. On 30 November 1998, General Nile was sent a communication by the secretariat requesting General Nile to reply to the claim development letter on or before 14 December 1998. General Nile did not reply.

52. The Panel finds that General Nile did not submit sufficient information or documentation to support its asserted losses.

53. Based on its findings regarding General Nile's claim, the Panel recommends no compensation for General Nile.

VI. CLAIM OF BRL (COMPAGNIE NATIONALE D'AMÉNAGEMENT DE LA RÉGION DU BAS-RHÔNE ET DU LANGUEDOC)

54. BRL (Compagnie Nationale D'Aménagement de la Région du Bas-Rhône et du Languedoc) ("BRL") is a publicly owed French corporation involved in consultancy services relating to hydraulic engineering and irrigation systems. The Claimant seeks compensation of US$442,917 for contract losses and interest. This amount takes into account additional interest in the amount of US$20,225 sought by BRL in its reply to the claim development letter.

55. In the "E" claim form, BRL appeared to have asserted a loss related to real and tangible property. However, BRL did not made any further references to such claim elements in any other documents submitted with its claim. BRL stated in the claim form that the tangible property "is not valued". A claim development letter was sent to BRL to clarify whether BRL was seeking compensation for loss of real and tangible property and if so, to request BRL to submit information and documentation sufficient to support its asserted losses.

56. In its reply to the claim development letter, BRL noted that the real and tangible property was "not valued" and was "miscellaneous". The Panel finds that BRL has not, therefore, incurred losses in respect of real or tangible property and its claim in these respects is not compensable.

Table 5. BRL'S CLAIM

Claim element	Claim amount (US$)
Contract losses	308,782
Interest	134,135
Total	442,917

A. Contract losses

1. Facts and contentions

57. In the early 1980's, BRL was retained by the Euphrates Center for Studies & Design of Irrigation Projects ("ECSDIP") in Iraq with respect to the Qurt Kurna and East Gharraf projects.

58. It would appear from the evidence submitted by BRL that the provision of services on both projects was completed at different times in 1986 following a series of delays. Delays by BRL in furnishing a final planning

report in respect of each of the projects resulted in a dispute between the parties. ECSDIP insisted that penalties be levied under the contract in respect of the delays. BRL denied that there were any such delays. A few years later, ECSDIP and BRL resolved their differences and reached agreement in principle in April 1990. Pursuant to the terms of the agreement, BRL would be retroactively afforded an extension from 20 August 1982 to 30 May 1986 for the Qurt Kurna project and an extension from 30 November 1983 to 28 October 1986 in respect of the East Gharraf project. ECSDIP agreed to this settlement on condition that BRL would not make a claim arising out of these extensions. It was contemplated that the final bills for the projects would be settled on this basis. BRL stated that it intended to send a representative to Iraq to sign the final settlement but was prevented from doing so by Iraq's invasion and occupation of Kuwait.

2. Analysis and Valuation

59. The Panel finds that the services performed by BRL were completed in 1986, and that the contract losses stated by BRL relate entirely to work that was performed prior to 2 May 1990.

60. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

61. The Panel further finds that the agreement concluded in principle between BRL and ECSDIP (subject to signing by both parties) with regard to settlement of the final bills did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

62. The Panel finds that BRL did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by BRL is a copy of the proposal for a final settlement together with two telexes which confirm the final settlement in principle subject to signing by the parties. BRL did not provide a copy of the contract and copies of applications for payment, approved payment certificates, interim certificates, progress reports invoices and actual payments received.

3. Recommendation

63. The Panel recommends no compensation for contract losses.

B. Interest

64. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for BRL

Table 6. RECOMMENDED COMPENSATION FOR BRL

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	308,782	nil
Interest	134,135	nil
Total	442,917	nil

65. Based on its findings regarding BRL's claim, the Panel recommends no compensation.

VII. CLAIM OF SODETEG S.A.

66. SOCIETE D'ETUDES TECHNIQUES ET D'ENTERPRISES GENERALES S.A. ("SODETEG") is a French corporation that is involved in the provision of project management and construction services. SODETEG seeks compensation in the amount of US$2,866,691 to satisfy an arbitral award dated 28 June 1993 based on a contract dispute with its Iraqi employer.

A. Contract losses

1. Facts and contentions

67. SODETEG entered into a contract on 10 February 1975 with the Ministry of Industry, the State Organization for Industrial Design and Construction ("SOIDC") for the construction of a plant to produce powdered baby milk in Abu-Ghraib, Iraq.

68. A number of disputes subsequently arose between the SODETEG and SOIDC concerning performance of the contract and eventually SOIDC withheld payments under the contract, withdrew the contract and called the outstanding letters of guarantee. On 6 December 1985, SODETEG submitted a request for arbitration to the International Court of Arbitration of the International Chamber of Commerce, Paris ("ICC") pursuant to the contract. On 28 June 1993, the ICC arbitral tribunal to which the dispute was submitted awarded SODETEG damages of FRF13,064,066 (US$2,492,191) together with interest accrued thereon against both SOIDC and the Ministry of Industry of Iraq. The ICC arbitral tribunal also awarded SODETEG the amount of US$374,500 in respect of arbitration costs and bank guarantee commissions paid by SODETEG for the defendant's advance on costs.

69. SODETEG contended that it did not succeed in recovering the amounts awarded under the award of the ICC arbitral tribunal as a result of "allied military operations in Iraq". SODETEG contended that the baby milk plant that was constructed under the contract was completely destroyed. The destruction of the plant together with the trade embargo have rendered the defendants to the ICC arbitration a "worthless shell". Accordingly, even if the embargo was lifted and it was possible for SODETEG to seize the defendant's assets, the latter would not have sufficient assets to satisfy the ICC arbitral award.

2. Analysis and valuation

70. The Panel finds that it is not the purpose of the Commission to afford claimants an alternative source of funds to satisfy arbitral awards or court judgements rendered against Iraq in other fora.

3. Recommendation

71. The Panel recommends no compensation for contract losses.

B. Interest

72. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for SODETEG

73. Based on its findings regarding SODETEG's claim, the Panel recommends no compensation.

VIII. CLAIM OF J.M. VOITH GMBH

74. J.M. Voith GmbH ("Voith"), a German construction company, seeks compensation in the amount of US$513,628 for contract losses and interest. Voith also seeks compensation in the amount of US$2,414,018 for what it described in the statement of claim as a "Subsidiary Motion". The latter amount takes into account additional interest in the amount of US$111,848 sought by Voith in its reply to the claim development letter.

Table 7. VOITH'S CLAIM

Claim element	Claim amount (US$)
Contract losses	306,316
Interest	207,312
"Subsidiary Motion"	2,414,018
Total	2,927,646

A. Contract losses and "Subsidiary Motion"

1. Facts and contentions

75. Under a contract dated 12 November 1981, Voith agreed to supply components for Kaplan-bulb-turbines together with auxiliary equipment for the Sadam Dam Project (formerly known as "Mosul Dam Project") in Iraq. Voith did not supply a copy of the contract, despite being specifically requested to do so in the claim development letter. Voith stated that it was a nominated subcontractor to the 'International Supply Consortium' ("ISC") led by Elin Energieerzeugung AG of Vienna, Austria. The main contract would appear to have been concluded by ISC with the State Commission on Dams.

76. In 1983 and 1984, Voith delivered about one half of the components for four bulb turbines.

77. Payment by Iraq for the components supplied by Voith was financed pursuant to a loan agreement. A loan was granted to Iraq by AKA Ausfuhrkredit-Gesellschaft mbH ("AKA"). According to the loan agreement, Iraq was obliged to pay 10 per cent of the foreign currency portion of all payments due to Voith. The remaining 90 per cent of the foreign currency net maturities due to Voith was financed by AKA in DM. Payments to Voith were effected directly upon the signing and handing over of so-called 'disbursement certificates'. Risk on seventy five per cent of the loan

amount was borne by Hermes Kreditversicherungs-AG ("Hermes"), the German export credit insurance corporation. Risk on the remaining 25 per cent was borne by AKA as a self-insured risk. However, AKA's risk was borne entirely by Voith by means of an exporters' guarantee signed in favor of AKA.

78. Disbursements under the loan were held up for some years because Iraq had not provided a number of certificates required by AKA. Eventually, at a meeting on 25 June 1990, Iraq signed the relevant certificates. At the same meeting, Voith was assured by Iraq it would soon receive payment of the cash portion of DM478,465.02 due to it.

79. Voith stated that AKA disbursed the outstanding amounts under the loan in mid-July 1990. However, Voith was not paid the 10 per cent cash portion. Voith contends that this was a direct result of the invasion and occupation of Kuwait as it expected to receive payment in August 1990.

80. Hermes compensated AKA for 75 per cent of its losses on the loan, and Voith paid AKA the remaining twenty five per cent in the amount of DM3,770,695.67. Although it received payment, AKA seeks compensation from the Commission under a separate claim for the latter amount. Voith seeks compensation of DM3,770,695.67 by way of a "Subsidiary Motion" in respect the amount paid to AKA in the event AKA's claim is not recommended for compensation.

2. Analysis and valuation

(a) Contract losses

81. Voith seeks compensation of US$306,316 for contract losses. The amount of the contract losses represents the cash portion due under the terms of the loan agreement which Iraq has failed to discharge.

82. The Panel finds that the claim for contract losses, although arising from Iraq's alleged breach of the terms of the loan agreement, is based on the delivery of goods prior to 2 May 1990.

83. Voith failed to supply a copy of the contract which governs the delivery of the components despite being specifically requested to do so in the claim development letter. Hence, it is not possible to determine if Iraq was a party to the contract. By its own admission, however, Voith was a nominated subcontractor and as such had "a direct payment demand against Iraq". Accordingly, the Panel finds that Voith had a contract with Iraq for

the purposes of the "arising prior to" clause in paragraph 16 of Security Council Resolution 687 (1991).

84. The Panel, therefore, finds the claim for contract losses is outside the jurisdiction of the Commission and is not compensable.

85. The Panel finds that Voith did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by Voith is the minutes of the meeting held on 25 June 1990 at which the settlement was reached regarding the loan agreement, an invoice dated 20 June 1990 recording the total amount due under the contract as well as the amount of the 10 per cent cash payment. The remainder of the evidence consists of correspondence with AKA and supporting documentation in respect of the loan agreement. Voith did not provide a copy of the contract or a copy of the loan agreement and copies of applications for payment, approved payment certificates, interim certificates, progress reports invoices and actual payments received.

(b) "Subsidiary Motion"

86. The Panel finds that it does not have jurisdiction over contingent claims. In addition, the Panel finds that Voith has not incurred a loss as its "Subsidiary Motion" is merely contingent upon another claim, and therefore, Voith's claim in this respect is not compensable.

3. Recommendation

87. The Panel recommends no compensation for contract losses and the "Subsidiary Motion".

B. Interest

88. As the Panel recommends no compensation for contract losses and the "Subsidiary Motion", there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Voith

Table 8. RECOMMENDED COMPENSATION FOR VOITH

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	306,316	nil
Interest	207,312	nil
"Subsidiary Motion"	2,414,018	nil
Total	2,927,646	13,425,933

89. Based on the its findings regarding Voith's claim, the Panel recommends no compensation.

IX. CLAIM OF MCK MASCHINENBAU GMBH & Co. KG

90. MCK Maschinenbau GmbH & Co. KG ("MCK") is a German corporation that is involved in grain, fruit and seed processing. MCK is seeking compensation in the amount of US$561,478 for contract losses, financial losses and interest.

Table 9. MCK'S CLAIM

Claim element	Claim amount (US$)
Contract losses	194,901
Financial losses	193,272
Interest	173,305
Total	561,478

A. Contract losses

1. Facts and contentions

91. In 1980, MCK entered into two contracts with the General Establishment for State Farms in Iraq for the supply of five sheds for grain storage and distribution (the "sheds contract") and for the construction of a seed processing plant (the "seed plant contract") respectively.

92. MCK completed work on the sheds contract and the Final Acceptance Certificate was granted in or around 1984. MCK attempted to finalize the remaining documentation with a view to obtaining final payment of US$136,379. MCK did not receive payment of this amount. In 1987, the Iraqi employer purported to annul the original terms of the contract and replace them with new ones. It requested MCK to resubmit the documentation to obtain payment. MCK complied with that request and, according to the statement of claim, Iraq "released payment of the remainder with the Bank of Iraq to be scheduled for payment". However, MCK did not receive actual payment of the outstanding amount.

93. Work on the seed plant contract was disrupted as a result of the Iran-Iraq war. However, by 1988 MCK completed work on the plant. The Final Acceptance Certificate was issued in 1989 and the performance bond was returned "untouched" the following year. According to the statement of claim, Iraq "released payment of the remainder with the Bank of Iraq to be

scheduled for payment". However, MCK did not receive actual payment of the outstanding amount of US$58,522.

94. By the middle of June 1990, MCK was informed by the Iraqi employer that it would be difficult to achieve payment of the two outstanding amounts, and it was suggested that MCK should rely instead on the performance bond.

95. MCK received partial compensation from the German export credit insurance corporation, Hermes Kreditversicherungs-AG ("Hermes") in respect of the seed plant contract. MCK received no compensation from Hermes in respect of the sheds contract.

2. Analysis and valuation

96. The Panel finds that the contract losses stated by MCK relate entirely to work that was performed prior to 2 May 1990.

97. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

98. The Panel finds that MCK did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by MCK is copies of the seed plant contract and a number of invoices and telexes sent by MCK to the Iraqi employer requesting payment of the outstanding sums. MCK omitted to submit a copy of the sheds contract, and a copy of applications for payment, approved payment certificates, interim certificates, progress reports and payments received.

3. Recommendation

99. The Panel recommends no compensation for contract losses.

B. Financial losses

1. Facts and contentions

100. MCK seeks compensation in the amount of US$193,272 for financial losses incurred for what MCK described in its statement of claim as "an efficient move of the proper Iraq quarters". These financial losses include fees paid to an Iraqi lawyer and customs payments. The purpose or recipients of other payments, such as "initiation of activities" is not clear. However, all the losses related to attempts by MCK to obtain payment of the final amounts due under the seed plant contract.

2. Analysis and valuation

101. The Panel finds that the expenses were incurred in MCK's attempts to recover part of the amounts claimed as contract losses. The claim for expenses, therefore, is ancillary to the claim for contract losses. The Panel recommends no compensation for the claimed expenses as the underlying claim for contract losses is not compensable (auxiliarium pricipali sequitur).

3. Recommendation

102. The Panel recommends no compensation for financial losses.

C. Interest on contract losses

103. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

D. Recommendation for MCK

Table 10. RECOMMENDED COMPENSATION FOR MCK

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	194,901	nil
Financial losses	193,272	nil
Interest	173,305	nil
Total	561,478	nil

104. Based on its findings regarding MCK's claim, the Panel recommends no compensation.

X. CLAIM OF SALZGITTER ANLAGENBAU

105. Salzgitter Anlagenbau ("Salzgitter") is a German corporation that is involved in the provision of consulting, construction and engineering services and the manufacture and supply of machinery and components. Salzgitter seeks compensation in the amount of US$3,424,117 for contract losses and interest.

106. Salzgitter received compensation of US$2,651,051 from the German export credit insurance company, Hermes Kreditversicherungs-AG ("Hermes"). However, Salzgitter did not deduct that amount from the amount claimed for contract losses.

Table 11. SALZGITTER'S CLAIM

Claim element	Claim amount (US$)
Contract losses	3,313,814
Interest	110,303
Total	3,424,117

A. Contract losses

1. Facts and contentions

107. On 2 February 1981, Salzgitter (then "Salzgitter Industrie-Technik GmbH") entered into a 'turnkey' contract with the Ministry of Industry and Minerals and the State Organization for Construction Industries for the construction and maintenance of a Brick Plant at Suwaira in Iraq.

108. The value of the contract was DM116,853,207 (US$74,809,992). All amounts due under the contract were paid to Salzgitter with the exception of the final 5 per cent of the contract. This amount would appear to represent retention monies payable under the contract.

109. According to Salzgitter, the work was completed by November 1982. The contract provided that a Provisional Acceptance Certificate would issue on completion, and following a one year maintenance period, the Final Acceptance Certificate would issue. The Final Acceptance Certificate was issued on 10 December 1984. However, in order to recover payment of the final 5 per cent amount, a number of clearing certificates from various Iraqi departments were required to be furnished under the contract. There

was some delay in obtaining the certificates, but they were eventually submitted by Salzgitter on 3 September 1985.

110. In the meantime, Iraq passed a new law which required the submission of a further clearing certificate from the customs authorities for release of final payment. Salzgitter experienced grave difficulties in obtaining the certificate. Salzgitter raised objections to the requirement with the Iraqi employer both directly and through diplomatic channels but to no avail.

111. In April 1990, Salzgitter finally succeeded in obtaining the certificate. Salzgitter stated that the Iraqi employer instructed the Central Bank of Iraq to make the final payment to the claimant in May 1990 but as result of the invasion and occupation of Kuwait, this payment was never received by the claimant.

2. Analysis and valuation

112. The Panel finds that the contract losses stated by Salzgitter relate entirely to work that was performed prior to 2 May 1990. Accordingly, the claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

113. The Panel finds that Salzgitter did not submit sufficient information to support its claim for contract losses. The only evidence provided by Salzgitter is a copy of the contract, a copy of a demand for payment dated 14 January 1985 and the letter of credit under which the contractual payments were financed. Salzgitter did not provide copies of either the provisional or the final acceptance certificates, invoices and actual payments received.

3. Recommendation

114. The Panel recommends no compensation for contract losses.

B. Interest on contract losses

115. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Salzgitter

Table 12. RECOMMENDED COMPENSATION FOR SALZGITTER

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	3,313,814	nil
Interest	110,303	nil
Total	3,424,117	nil

116. Based on its findings regarding Salzgitter's claim, the Panel recommends no compensation.

XI. CLAIM OF WEIDLEPLAN CONSULTING GMBH

117. Weidleplan Consulting GmbH ("Weidleplan") is a German corporation that is involved in the performance of all types of planning and design commissions, including the provision of consultancy and construction management services. Weidleplan seeks compensation in the amount of US$305,993 for contract losses and interest.

118. Weidleplan received compensation of US$169,759 from the German export credit insurance company, Hermes Kreditversicherungs-AG ("Hermes"). Weidleplan claims for the balance of the alleged contract losses for which it received no compensation.

Table 13. WEIDLEPLAN'S CLAIM

Claim element	Claim amount (US$)
Contract losses	203,380
Interest	102,613
Total	305,993

A. Contract losses

1. Facts and contentions

119. On 19 August 1981, Weidleplan entered into a contract with the State Organization for Roads and Bridges for the supply of professional engineering services in respect of the design, construction, operation and maintenance of the Mosul International and Erbil National Airports. Weidleplan was retained to provide design work and preparation of contract documentation, and construction management services.

120. The documentary evidence submitted by Weidleplan suggests that Weidleplan had completed the design work and contract documentation by 1987. Sometime at the beginning of 1990, the Iraqi Government informed Weidleplan that it had decided not to proceed with the construction of the airport.

121. On the 24 September 1990, Weidleplan concluded an agreement with the Iraqi employer for settlement of the outstanding amount due. The amount of the settlement was ID127,355 with 60 per cent payable in foreign currency and 40 per cent payable in local currency. The remainder of the contract, in so far as the provision of construction management services were concerned, was terminated.

2. Analysis and valuation

122. The Panel finds that the contract losses stated by Weidleplan relate entirely to services that were rendered prior to 2 May 1990.

123. The Panel finds that the settlement agreement of 24 September 1990 did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

124. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

125. The Panel finds that Weidleplan did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by Weidleplan was an incomplete copy of the contract, a copy of the settlement agreement and copies of correspondence with Hermes relating to the claimant's application for payment of compensation from Hermes. Weidleplan did not provide copies of applications for payment, approved payment certificates, interim certificates, progress reports, invoices and payments received in support of its asserted losses.

3. Recommendation

126. The Panel recommends no compensation for contract losses.

B. Interest on contract losses

127. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Weidleplan

Table 14. RECOMMENDED COMPENSATION FOR WEIDLEPLAN

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	203,380	nil
Interest	102,613	nil
Total	305,993	nil

128. Based on its findings regarding Weidleplan's claim, the Panel recommends no compensation.

XII. CLAIM OF ASIA FOUNDATIONS AND CONSTRUCTIONS LIMITED

129. Asia Foundations and Constructions Limited ("Asia Foundations") is an Indian construction company that specializes in the construction of bridges. Asia Foundations seeks compensation in the amount of US$3,665,427 for contract losses and the loss of funds held in an Iraqi bank account.

Table 15. ASIA FOUNDATIONS' CLAIM

Claim element	Claim amount (US$)
Contract losses	3,472,328
Iraqi bank account	193,099
Total	3,665,427

A. Contract losses

1. Facts and contentions

130. Asia Foundations seeks compensation for contract losses in relation to four contracts concluded with various Iraqi entities in 1979 and 1980, as follows:

(a) Construction of a Road Bridge on Euphrates River at Shanafia, Iraq;

(b) Deflector Wall at Earthen Dyke along River Diala near Saadiya;

(c) Construction of Pre-Stressed Concrete Bridges on Baghdad-Mosul S.G. Line; and

(d) Three Railway Bridges across the Euphrates River, Warrar Inlet and Tuban Outlet.

131. The employers under the various contracts were the State Organization for Roads and Bridges, Iraqi Republic Railways Organization - Ministry of Transport and Communication, and the State Construction Contracting Company. Hence, there is a presumption that the contracts were with Iraq.

132. The contract losses comprise loss of deferred receivables in respect of the Shanafia and Pre-stressed Concrete Bridges contracts, loss of retention monies under the Shanafia, Pre-stressed Concrete Bridges and the

Deflector walls contracts and loss of final monies in respect of the Three Railway Bridges contract.

2. Analysis and valuation

133. Asia Foundations did not state the date or dates on which the work performed under the contracts was completed. However, Asia Foundations entered the contracts in 1979 and 1980, and according to the evidence submitted with the claim, the Iraqi branch of Asia Foundations went into liquidation in 1989. From this evidence, the Panel draws the inference that all work under the contracts was completed prior to 2 May 1990. Accordingly, the claim relates entirely to work that was completed prior to 2 May 1990 and is not within the jurisdiction of the Commission.

134. The Panel finds that the deferred payment agreement - in so far as it related to the contract losses - does not constitute a new agreement for the purposes of the Commission, but merely is an arrangement for deferred payment of the existing obligations of Iraq arising prior to 2 August 1990.

135. The Panel finds that Asia Foundations did not submit sufficient information to support its claim for contract losses. The only evidence provided by Asia Foundations is copies of three of the contracts and a letter of agreement regarding the Shanifia contract. Apart from this evidence, Asia Foundations has submitted correspondence received from the Export-Import Bank of India as proof of the outstanding deferred receivables and copies of some of its accounts and certified accountant certificates in respect of the other contract losses. It did not provide copies of the fourth contract and applications for payment, approved payment certificates, interim certificates, progress reports, invoices and actual payments received.

3. Recommendation

136. The Panel recommends no compensation for contract losses.

B. Iraqi bank account

137. Asia Foundations maintained account number 31370 with the Raifidin Bank. The balance as at 31 December 1989 was ID57,167 (US$193,099).

138. The Panel finds that Asia Foundations did not submit sufficient information or documentation to support its asserted losses. Asia Foundations only submitted copies of a letter received from the bank confirming the balance on the account and statements prepared by Asia Foundations recording transactions on the account and the balance thereof up to 31 December 1989. Asia Foundations did not demonstrate that the account is no longer in existence or that Asia Foundations was denied access to the funds. Further, Asia Foundations did not demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq. Finally, Asia Foundations did not demonstrate that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

C. Recommendation for Asia Foundations

Table 16. RECOMMENDED COMPENSATION FOR ASIA FOUNDATIONS

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	3,472,328	nil
Iraqi Bank Account	193,099	nil
Total	3,665,427	nil

139. Based on its findings regarding Asia Foundations' claim, the Panel recommends no compensation.

XIII. CLAIM OF SYNDICATE ENGINEERING COMPANY (BHILAI) PRIVATE LTD.

140. Syndicate Engineering Company (Bhilai) Private Ltd. ("Syndicate") is an Indian company that is involved in the provision of construction and engineering services. Syndicate seeks compensation in the amount of US$722,186 for contract losses.

Table 17. SYNDICATE'S CLAIM

Claim element	Claim amount (US$)
Contract losses	722,186
Total	722,186

A. Contract losses

1. Facts and contentions

141. Syndicate entered into two contracts dated the 3 November 1982 and 21 December 1983 for the construction of a car park complex, a college of education and a supermarket in Baghdad (the "first contract"), and an external water supply and sewerage system for a housing project at Diala, Baquba (the "second contract"). The first contract was a subcontract with a Kuwaiti contractor, Al-Sanea General Contracting Company. The second contract was with the Ministry of Heavy Industry.

142. Syndicate completed work on both projects and Final Acceptance Certificates were issued in respect of each project in 1985. In order to obtain final payment, Syndicate was obliged to complete a number of formalities in Iraq, such as obtaining clearance certificates relating to social security and income tax.

143. Syndicate continued to pursue payment of the outstanding amounts due under the contracts until 1990. Syndicate contended that it was disrupted in its efforts as a result of Iraq's invasion and occupation of Kuwait which resulted in nonpayment of the outstanding sums.

144. The claim for contract losses in respect of the first contract relates to final payments and retention monies. These amounts are denominated in Iraqi dinars (30 per cent), i.e. ID67,218 (US$215,100) and Kuwaiti dinars (70 per cent), i.e. KD116,888 (US$389,240) respectively.

145. The claim for contract losses in respect of the second contract relates to an outstanding final bill of US$117,846.

2. Analysis and valuation

(a) First contract (with Kuwaiti contractor)

146. The documents submitted by Syndicate include a copy of subcontract dated 3 November 1982, a letter dated 17 November 1987 from the Kuwaiti contractor acknowledging as due the claimed amounts and correspondence addressed to the Kuwaiti employer, the Iraqi employer (under the main contract) and to the Indian Embassy in Baghdad seeking payment of the outstanding amounts. Syndicate did not provide a copy of the main contract.

147. The Panel finds that Syndicate did not demonstrate that its losses under the first contract were the direct result of Iraq's invasion and occupation of Kuwait. Work on the first contract was completed approximately 5 years before Iraq's invasion and occupation of Kuwait. Syndicate failed to demonstrate that the failure of the Kuwaiti contractor to pay the amounts due and owing was attributable to the Kuwaiti contractor being rendered insolvent or liquidated as a direct result of Iraq's invasion and occupation of Kuwait.

148. The Panel recommends no compensation for final payments and retention monies under first contract.

(b) Second contract (with Iraqi employer)

149. The Panel finds that the contract losses under the second contract stated by Syndicate relate entirely to work that was performed prior to 2 May 1990. The Panel also finds that as the second contract was, for the reasons stated in paragraph 11, with Iraq. Accordingly, the claim for contract losses in respect of the second contract is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

150. The Panel finds that Syndicate did not submit sufficient evidence to support its asserted losses. The only evidence provided by Syndicate is a copy of the contract as well as variations to the tender documentation that formed part of the contract. Syndicate also submitted one letter of demand addressed to the Iraqi employer under the second contract. Syndicate did not provide copies of applications for payment, approved payment

certificates, interim certificates, progress reports, invoices and payments received.

3. Recommendation

151. The Panel recommends no compensation for contract losses under the first and second contracts.

B. Recommendation for Syndicate

Table 18. RECOMMENDED COMPENSATION FOR SYNDICATE

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	722,186	nil
Total	722,186	nil

152. Based on its findings regarding Syndicate's claim, the Panel recommends no compensation.

XIV. CLAIM OF DRIPLEX WATER ENGINEERING (INTERNATIONAL) LIMITED

153. Driplex Water Engineering (International) Limited ("Driplex") is an Indian company that specializes in the construction and engineering of water treatment plants. Driplex seeks compensation in the amount of US$754,000 for contract losses, loss of tangible property and interest.

154. In its reply to the claim development letter, Driplex stated that it received compensation from the Government of India through the issue of 12.08 per cent bonds for the amount of INR2,566,242 (which Driplex contends is equivalent to US$81,727). The bonds are due to mature in 2001. The Government of India assigned the bonds on condition that Driplex assign its interest in all receivables to the Government of India.

Table 19. DRIPLEX'S CLAIM

Claim element	Claim amount (US$)
Contract losses	318,000
Tangible property losses	150,000
Interest	286,000
Total	754,000

A. Contract losses

1. Facts and contentions

155. Driplex entered into a contract dated 14 October 1981 with the State Establishment for Water and Sewage for the construction of a water treatment plant at the Al-Neshwa water supply scheme.

156. The contract works began on 9 December 1981. Driplex completed work on the project on 22 September 1984 and a Provisional Acceptance Certificate was issued on 29 December 1984. Driplex submitted a letter dated 9 February 1985 sent by the Iraqi employer to the Iraqi Income Tax office in which the Iraqi employer indicated its willingness to pay the final bill and the retention monies due under the contract subject to receiving the approval of that office.

157. The claim for contract losses is composed of three separate claims as follows:

(a) US$80,000 in respect of monies owed under a deferred payments agreement between India and Iraq dated 15 March 1984;

(b) US$88,000 in respect of a final bill and approved by the Iraqi employer by letter dated 9 February 1985 but not yet paid; and

(c) US$150,000 in respect of retention payments owed to Driplex under the contract approved by the Iraqi employer by letter dated 9 February 1985 but not yet paid.

158. Driplex contended that as a result of Iraq's invasion and occupation of Kuwait and the trade embargo imposed on Iraq it has been prevented from recovering contractual amounts owed to it and equipment it left behind in Iraq.

2. Analysis and valuation

159. The Panel finds that all three contract losses stated by Driplex relate entirely to work that was performed prior to 2 May 1990.

160. The Panel further finds that the inter-governmental deferred payment agreement of 15 March 1984, in so far as it related to the contract losses, did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

161. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

162. The Panel finds that Driplex did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by Driplex was an incomplete copy of a copy of the contract agreement and a letter of intent dated 14 October 1981. Driplex also submitted a letter from the Iraqi employer dated 9 February 1985 and addressed to the Iraqi Income Tax Department recommending payment of the final bill and retention monies, and two letters from Export and Import Bank of India dated 24 December 1992 and 19 May 1995 noting the balance of receivables held to the Driplex's credit with the Central Bank of Iraq. Driplex did not submit copies of applications for payment, approved payment certificates, interim certificates, progress reports, invoices and payments received.

3. Recommendation

163. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

164. Driplex seeks compensation in the amount of US$150,000 for loss of "inventories, and equipment" in Iraq, namely three vehicles and various items of machinery, furniture and fixtures. Driplex contended that these items had been procured in connection with the implementation of the contract with the intention that they would be used for other projects. Driplex did not state where the property was located in Iraq or the date it was allegedly lost.

165. In its original submission, Driplex had asserted that due to the trade embargo it was not possible to dispose of the "inventories and equipment laying at the project site in Iraq". In its reply to the claim development letter, Driplex stated that the property was lost due to the departure of its staff from Iraq who "had to leave Iraq in order to save their lives".

166. The asserted loss of "inventories and equipment" is supported only by two invoices for the three vehicles, confirmation of payment of the invoiced amounts from Driplex's bank and a certificate from an engineer which purports to certify the value of the machinery, furniture and fixtures at US$150,000. The invoices were issued by a Kuwaiti company to Driplex in 1983. They include in the invoiced amount, a charge for transporting two of the vehicles from Kuwait to Basra and the third vehicle from Kuwait to Neshwa respectively. The engineer's certificate does not provide the specific value of each item of property nor does it state where the property was located ultimately.

167. Driplex submitted no evidence to support its contention that its staff left Iraq at the time of the invasion and occupation of Kuwait. Further, Driplex did not explain why the property was still on site almost six years after work on the project was completed. Driplex submitted no evidence to support its statement that the machinery and vehicles were being used for another project or that there was another project ongoing at the time of Iraq's invasion and occupation of Kuwait.

168. The Panel finds that Driplex submitted insufficient evidence of ownership, age, cost or presence of either the vehicles or the machinery, furniture and fixtures in Iraq. Driplex submitted no evidence that the loss

of the property directly resulted from Iraq's invasion and occupation of Kuwait.

169. Finally, the Panel notes that the invoices for the vehicles were dated in 1983. Taking into consideration the likely age of the property, the Panel finds that the property would have been worthless at the time it was allegedly lost or stolen.

170. The Panel recommends no compensation for loss of tangible property.

C. Interest on contract losses

171. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

D. Recommendation for Driplex

Table 20. RECOMMENDED COMPENSATION FOR DRIPLEX

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	318,000	nil
Loss of tangible property	150,000	nil
Interest	286,000	nil
Total	754,000	nil

172. Based on its findings regarding Driplex's claim, the Panel recommends no compensation.

XV. CLAIM OF RECONDO LIMITED

173. Recondo Limited ("Recondo") is an Indian company that is involved in the construction and engineering of roads, runways, canals and power generators. Recondo seeks compensation in the amount of US$2,540,000 for contract losses and interest.

Table 21. RECONDO'S CLAIM

Claim element	Claim amount (US$)
Contract losses	1,680,000
Interest	860,000
Total	2,540,000

A. Contract losses

1. Facts and contentions

174. On the 8 August 1981, Recondo entered into a contract for the construction of 9 concrete weirs across the Khasa-Chai river in Kirkuk, Iraq. According to the evidence submitted by Recondo, the employer was "the Director General of the Kirkuk Irrigation Project Administration, New Tess'een Kirkuk, Government of Iraq, Iraq". The value of the contract was ID8,689,600. Recondo completed the contract works on or around 9 May 1984. The evidence submitted by Recondo suggest that the contract losses were covered by an Indo-Iraq deferred payment agreement.

2. Analysis and valuation

175. The Panel finds that the contract losses were for work performed prior to 2 May 1990. The loss is characterized as a debt of Iraq that arose prior to Iraq's invasion of Kuwait.

176. The Panel further finds that the inter-governmental deferred payment agreement did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

177. The Panel finds that Recondo did not submit sufficient evidence to support the asserted losses. The only evidence provided by Recondo is a copy of a file relating to its unsuccessful claim for compensation from the Export Credit Guarantee Corporation of India Ltd. and a final certificate, but this is largely illegible. Recondo did not provide copies of the

contract or applications for payment, approved payment certificates, interim certificates, progress reports, invoices and actual payments received.

3. Recommendation

178. The Panel recommends no compensation for contract losses.

B. Interest on contract losses

179. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Recondo

Table 22. RECOMMENDED COMPENSATION FOR RECONDO

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	1,680,000	nil
Interest	860,000	nil
Total	2,540,000	nil

180. Based on its findings regarding Recondo's claim, the Panel recommends no compensation.

XVI. CLAIM OF TRIVENI STRUCTUFALS LIMITED

181. Triveni Structurals Limited ("Triveni") is an Indian corporation that is involved in the design, manufacture and erection of equipment, machinery and larger structures, such as towers. Triveni seeks compensation in the amount of US$1,400,964 for contract losses and loss of tangible property.

Table 23. TRIVENI'S CLAIM

Claim element	Claim amount (US$)
Contract losses	1,234,685
Loss of tangible property	166,279
Total	1,400,964

A. Contract losses

1. Facts and contentions

182. On 26 April 1980, Triveni entered into a contract with the State Enterprise of Tharthar Tigris Canal Project for the design, manufacture, delivery and erection of fabricated steel structures and the provision of other items for the Tharthar Tigris Canal project (the "project"). The value of the contract, according to Triveni, was US$2,850,496.

183. The Claimant completed work on the project in December 1987. The maintenance period ended in December 1988. By that stage, Triveni had received payments totaling US$1,615,811 leaving an outstanding amount of US$1,234,685 due to Triveni. Of this amount, US$634,611 was covered by a deferred payments agreement between India and Iraq.

184. Triveni seeks compensation of US$600,074 for the unpaid final bill for the project and US$634,611 in respect of an amount for which Triveni was given a credit advice under a deferred payments agreement between Iraq and India which remains unpaid.

185. Triveni asserts that it presented a final bill to the Iraqi employer on 21 January 1992 for payment, but with no success.

2. Analysis and valuation

186. The Panel finds that the contract losses stated by Triveni relate entirely to work that was performed prior to 2 May 1990.

187. The Panel further finds that the inter-governmental deferred payment agreement did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

188. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

3. Recommendation

189. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

190. Triveni seeks compensation in the amount of INR2,931,000 (US$166,279) for loss of tangible property. The property for which Triveni claims a loss is comprised of items of machinery and equipment.

191. Triveni provided no explanation or evidence of how the loss of tangible property directly resulted from the invasion and occupation of Kuwait. In its reply to the claim development letter, Triveni asserted that the property "was lying on site during the Iraq-Kuwait war and could not be returned to India".

192. The loss of machinery and equipment is supported only by a list of items on site in Iraq on 31 January 1986. The list contains a brief description of the item and the number of such items on site. The list includes a note of items that were purchased in Iraq, received from the Iraqi employer and those that were purchased abroad.

193. The Panel finds that Triveni did not provide sufficient evidence to support its loss of tangible property. The list submitted by Triveni does not establish ownership, age, cost or presence of the equipment in Iraq at the time of the invasion and occupation of Kuwait.

194. The Panel recommends no compensation for loss of tangible property.

C. Recommendation for Triveni

Table 24. RECOMMENDED COMPENSATION FOR TRIVENI

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	1,234,685	nil
Loss of tangible property	166,279	nil
Total	1,400,964	nil

195. Based on its findings regarding Triveni's claim, the Panel recommends no compensation.

XVII. CLAIM OF AURORA ENGINEERING

196. Aurora Engineering is an Indian registered partnership (between J.S. Aurora, Meera Aurora and Shavinder Singh Aurora) involved in "the supply and management of manpower and civil construction work". In Aurora Engineering's original submission, it was stated that Aurora Engineering was "a sole proprietorship owned and controlled by Mr. J.S. Aurora".

197. Aurora Engineering seeks compensation in the amount of US$9,200,142 for contract losses, loss of earnings and profit, loss of tangible property, payment or relief to others, other losses and interest.

198. The Panel has been informed by the secretariat that Mr. J.S. Aurora submitted a claim to the "D" Panel for the same asserted losses. Aurora Engineering did not disclose the existence of this overlapping claim either in its original submission or in its reply to the claim development letter. The secretariat has further informed the Panel that the "D" claim also includes two claims for Mental Pain and Anguish. In his original submission of the "D" claim, Mr. Aurora asserted that Aurora Engineering is a sole proprietorship and also failed to disclose that Aurora Engineering had submitted an "E" claim to the Commission. The Panel understands that the business claims before this Panel and the "D" Panel are identical.

199. The Panel notes that it is not seized of personal claims. Therefore, the Panel makes no findings as to the compensability of the "D" claim.

Table 25. AURORA ENGINEERING'S CLAIM

Claim element	Claim amount (US$)
Contract losses:	
(1) Unpaid invoices	542,720
(2) Unpaid "leave salary"	227,821
Loss of profits	8,092,899
Loss of tangible property	73,154
Payment or relief to others	33,420
Other losses:	
(1) Rent paid on Baghdad office	33,693
(2) Travel expenses to Iraq	3,800
Interest	192,635
Total	9,200,142

A. Contract losses

1. Unpaid invoices

(a) Facts and contentions

200. On 6 August 1988, Aurora Engineering entered into a contract for the provision, supervision and management of skilled workers to the Technical Corps for Special Projects of the Ministry of Military Industry. Aurora Engineering supplied the manpower for work on the Abu Ja'far Al Mansour and the Al Riyaldh projects (the "projects") in Iraq.

201. The Iraqi employer terminated the contract by letter 19 September 1990, but gave no reason for doing so. Aurora Engineering contended that it had to evacuate its employees from Iraq "due to the apprehension of bombardment of Iraq" because of its invasion and occupation of Kuwait.

202. Aurora Engineering asserted that it had not been paid the foreign currency portion of monthly invoices submitted to the Iraqi employer or "leave salary" due under Iraqi Law. Aurora Engineering seeks compensation of ID169,130 (US$542,720) for unpaid work.

203. Aurora Engineering was contractually entitled to be paid on a monthly basis for provision of manpower at the rates set out in an appendix to the contract. The appendix lists 779 different workers and their monthly rates. The monthly bill was to be paid in Iraqi dinars (60 per cent) and United States dollars (40 per cent). According to the contract, the foreign currency portion of each invoiced amount was payable within 45 days of the invoice. It was to be paid through the Central Bank of Iraq to Aurora Engineering's accounts outside of Iraq.

204. Aurora Engineering stated that at the time of the invasion and occupation of Kuwait, payment of the foreign currency portion was in arrears of 6 to 8 months. However, Aurora Engineering did not state specifically which of the monthly payments under the contract was outstanding nor did it submit copies of the monthly bills and invoices which it alleged have not been paid by Iraq.

205. Aurora Engineering contended that its records were kept on site in Iraq and that it left behind all of the records in Iraq as they were too bulky to transport back to India during the evacuation. Aurora Engineering stated that it did not keep a duplicate set of records in its head office in India.

206. The only evidence which Aurora Engineering submitted was a number of letters which it obtained from Iraq acknowledging that a number of amounts due to Aurora Engineering have not been paid. These amounts add up to the total claimed amount and represent the foreign currency portion and what is referred to as a "security amount". Aurora Engineering also submitted a letter dated 24 November 1990 sent by the Iraqi employer to Aurora Engineering. The letter acknowledges that:

- amounts of ID6,369 and ID5,399 were due for July 1990;
- ID6,925 were due to Aurora Engineering for August/September 1990;
- ID5,141 were due to for August/September/October 1990; and
- deposits of ID8,061 and ID4,410 were due for 91 and 41 workers respectively.

The total amount acknowledged as due in the letter is ID36,305 (which is stated in the same letter to be the equivalent of US$116,499). That amount

represents less than 25 per cent of the claimed amount of ID169,130 (US$542,720).

(b) Analysis and valuation

207. Aurora Engineering submitted a copy of the contract and correspondence from Iraq which acknowledged that various amounts equal to the claimed amount were owed to the Claimant. It submitted a translation of letter dated 19 September 1990 by which the Iraqi employer terminated the contract. Aurora Engineering did not provide copies of monthly bills, invoices or time sheets. Aurora Engineering contended these records were left behind in Iraq when Aurora Engineering evacuated its employees and were subsequently destroyed.

208. Aurora Engineering did not state nor did it submit evidence of the dates on which the services (in this case, the provision of workers) were rendered under the contract, despite being asked to do so in the claim development letter. Aurora Engineering only submitted an acknowledgment from the Iraqi employer of debts for July through to October 1990.

209. The Panel finds that Aurora Engineering did not submit sufficient evidence to support its claim for unpaid invoices. Even acknowledging the differences in record keeping procedures that exist in various countries, the Panel is not convinced that the only copy of Aurora Engineering's records was kept in Iraq, particularly as the contract involved the supply of Indian workers for Iraqi projects. Furthermore, the Panel finds that Aurora Engineering did not demonstrate that its claim for unpaid invoices was the direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommendation

210. The Panel recommends no compensation for unpaid invoices.

2. Unpaid "leave salary"

211. Aurora Engineering seeks compensation of ID70,996 (US$227,821) for "leave salary" which it claims is owed to it by the Iraqi employer under Iraqi law.

212. Aurora Engineering stated that under Iraqi law (which is incorporated into the contract under clause 16), the Iraqi employer was obliged to pay it "leave salary" at 20 days in a year of 326 days or 6.13 per cent of basic monthly wages. Aurora Engineering alleged the total amount of basic wages was certified at ID1,157,249, and therefore, calculated that it was due an amount of ID70,996.

213. Aurora Engineering did not specify reference to the relevant Iraqi law under which Iraq is allegedly liable for such payments. However, Aurora Engineering contended in its reply to the claim development letter that payment of leave salary is customary practice throughout the world, required by International Labour Organization standards and obligatory under Iraqi law.

214. The Panel finds that Aurora Engineering failed to establish that Iraq was obliged to pay the "leave salary" nor has Aurora Engineering submitted evidence that it was the practice of Iraq to pay "leave salary" in the past.

215. The Panel recommends no compensation for unpaid "leave salary".

3. Recommendation for contract losses

216. Based on its finding regarding unpaid invoices and "leave salary", the Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

217. In its original submission, Aurora Engineering sought compensation of US$6,878,964 for loss of earnings and US$1,213,935 for loss of profits. In its reply to a claim development letter, Aurora Engineering sought compensation for loss of earnings only as the "loss of profits is included within the loss of earnings portion".

218. Aurora Engineering asserted that it is entitled to compensation in an amount at least equal to the value of the contract executed to the date of

termination. Aurora Engineering submitted correspondence from the Iraqi employer which acknowledged that the value of work carried out on the projects up to termination of the contract was ID1,277,687 and ID1,244,338 respectively. The total amount is ID2,522,025 which Aurora Engineering asserted is equivalent to US$8,092,899.

219. Aurora Engineering stated that its expected profit margin was 15 per cent of "earnings".

2. Analysis and valuation

220. The Panel finds that Aurora Engineering's claim for loss of "earnings" is unsubstantiated. Aurora Engineering failed to explain the basis for its assertion that it is entitled to compensation in an amount at least equal to the value of the contract executed to the date of termination. Further, the Panel finds that Aurora Engineering did not submit any evidence to establish that it would have earned any profit, let alone 15 per cent of revenue under the contract.

3. Recommendation

221. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

222. Aurora Engineering seeks compensation of ID7,700 (US$24,654) for losses related to the expropriation of 5 Toyota jeeps and 2 pickups which it states it specially imported into Iraq for its operations. Aurora Engineering asserted that these vehicles were expropriated by the Iraqi employer.

223. Aurora Engineering also seeks compensation of US$48,500 for the loss of property from two site offices, two director establishments and one staff establishment. These largely consisted of furniture and domestic electrical appliances, such as refrigerators. Aurora Engineering did not explain how the property was lost, but simply attributes the loss to Iraq's invasion and occupation of Kuwait.

224. The only evidence submitted by Aurora Engineering in support of its claim is untranslated copies of what it alleges are the Iraqi import and registration documents for the vehicles.

2. Analysis and Valuation

225. With respect to physical assets in Iraq on 2 August 1990, the Panel has held that a claimant may prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets. The claimant must then establish its ownership, the value and the presence of such physical assets.

226. Aurora Engineering did not provide sufficient evidence of its ownership, the value and the presence of the tangible property located in Iraq. Further, the Panel finds that Aurora Engineering did not provide evidence of the evacuation of its workers from Iraq.

227. Finally, the Panel finds that Aurora Engineering has submitted no evidence that the vehicles were expropriated.

3. Recommendation

228. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

229. Aurora Engineering stated that following Iraq's invasion and occupation of Kuwait, the workforce became "anxious, agitated and apprehensive of their safety" because of the threat of military action. This situation was exacerbated by the fact that the workers could not immediately leave Iraq following the invasion and were obliged to remain in Iraq until over month later. As a form of relief, Aurora Engineering asserted that it made ex gratia payments totaling INR668,407 (US$33,420) to some of its employees.

230. Aurora Engineering has attributed the losses in this regard to threat of military action (as specified paragraph 21(a) of decision 7) but it has not submitted any evidence in this respect.

231. The Panel finds Aurora Engineering submitted no evidence to support its claim for the asserted losses. It failed to provide a list of the employees to whom it alleged it paid such "ex gratia" payments, payroll records for the employees for the period relevant to its claim, or proof that the claimed amount was paid by Aurora Engineering.

232. The Panel recommends no compensation for payment or relief to others.

E. Other losses

(1) Rent paid on Baghdad office

233. Aurora Engineering seeks compensation of ID10,500 (US$33,693) for rent paid in respect of its office. Aurora Engineering asserted that although it departed from Iraq, it was necessary to continue to rent its office premises in order to store the records of the partnership.

234. Aurora Engineering did not furnish any evidence in support of its claims for compensation in respect of rent paid. As for other asserted losses, Aurora Engineering stated that the documents were lost in Iraq.

235. The Panel finds that rent is not an expense that is chargeable to the Employer, but part of the overheads that a contractor uses to calculate the rates charged, and therefore finds that pre-paid rent is not compensable.

236. The Panel finds that Aurora Engineering did not submit any evidence to support its asserted losses.

237. The Panel recommends no compensation for losses arising from the payment of rent on Aurora Engineering's Baghdad office.

(2) Travel expenses to Iraq

238. Aurora Engineering also claimed expenses of US$3,800 allegedly incurred by Mr. J.S. Aurora in traveling to Iraq in 1991 in order to recover payment.

239. Aurora Engineering submitted an affidavit of Mr. J.S. Aurora in support of its asserted losses. According to the affidavit, Mr. J.S. Aurora flew to Amman from New Delhi on 4 November 1991 and traveled by road to Baghdad. In the affidavit, Mr. J.S. Aurora alleges that the purpose of the visit was to obtain payment from Iraq.

240. As further evidence of its claim for travel expenses, Aurora Engineering submitted copies of two airline ticket stubs. One appears to be a return air fare with Royal Jordanian Airlines from New Delhi to Amman dated 1 November 1991 and the other appears to be a return airfare from New Delhi via Amman to Baghdad. Aurora Engineering did not submit any

documentary evidence in support of its claim for living expenses of US$3,000 allegedly incurred during Mr. Aurora's three months stay in Iraq.

241. The Panel finds that claims for travel expenses incurred by a claimant in attempting to mitigate its losses are compensable in principle, provided the Panel is satisfied that the travel was undertaken in order to mitigate the claimants's losses and the trip was undertaken at a reasonable cost.

242. The Panel finds that Aurora Engineering did not submit sufficient proof of the purpose of Mr. J.S. Aurora's visit to Iraq or sufficient evidence of its asserted losses.

243. The Panel recommends no compensation for travel expenses to Iraq.

F. Interest on contract losses

244. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

G. Recommendation for Aurora Engineering

Table 26. RECOMMENDED COMPENSATION FOR AURORA ENGINEERING

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses:		
(1) Unpaid invoices	542,720	nil
(2) Unpaid "leave salary"	227,821	nil
Loss of earnings and profits	8,092,899	nil
Loss of tangible property	73,154	nil
Payment and relief to others	33,420	nil
Other losses:		
(1) Rent paid on Baghdad office	33,693	nil
(2) Travel expenses to Iraq	3,800	nil
Interest	192,635	nil
Total	9,200,142	nil

245. Based on its findings regarding Aurora Engineering's claim, the Panel recommends no compensation.

XVIII. CLAIM OF SOCIETÀ TECNICA INTERNAZIONALE (SOTECNI) S.P.A.

246. Società Tecnica Internazionale (SOTECNI) S.p.A. ("Sotecni") is an Italian publicly held corporation that is involved in the provision of construction management and consulting services. Sotecni seeks compensation in the amount of US$845,287 for contract losses.

Table 27. SOTECNI'S CLAIM

Claim element	Claim amount (US$)
Contract losses	845,287
Total	845,287

A. Contract losses

1. Facts and contentions

247. Sotecni was engaged by the New Railways Implementation Authority of Iraq to provide design and management services in respect of the construction of two sections of the Mussieb-Samawa railway line in southern Iraq. Sotecni did not disclose the date or the total amount of the contract.

248. Under the contract, the Iraqi employer discharged invoices submitted by Sotecni by forwarding payment orders to the Raifidin Bank. The payment orders included both the amounts to be paid in local currency and in transferable foreign currencies. Due to what Sotecni describes as the "situation in which the country found itself", the Raifidin bank dishonored the payment orders relating to invoices numbers 51 and 53 to 71.

249. Iraq and Italy subsequently entered into a deferred payments agreement on 19 March 1987, inter alia, with respect to outstanding payments owed to Italian companies. An agreement was later reached on 7 May 1987 by Raifidin Bank and the Banca Nazionale del Lavoro which implemented the payment procedure outlined in the part of the deferred payment agreement that, inter alia, related to unconfirmed and uninsured letters of credit, and invoices.

250. The deferred payment agréement covered an amount of US$40,000,000, which included the sums due and owing to Sotecni. Of this global figure, US$30,000,000.00 was paid off by the Raifidin Bank and Sotecni's proportionate share was discharged. However, the remaining US$10,000,000 representing the final three instalments remained outstanding. Of this amount, Sotecni asserted that it was owed an amount of US$845,287. Sotecni

attributed the continuing failure of the Rafidain Bank to discharge this amount to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

251. The Panel finds that the contract losses stated by Sotecni relate entirely to work that was performed prior to 2 May 1990. The claimed amount was included under the deferred payment agreement in 1987. From this evidence, the Panel draws the inference that all work under the contract was completed prior to 2 May 1990. Accordingly, the claim relates entirely to work that was completed prior to 2 May 1990.

252. The Panel further finds that the inter-governmental deferred payment agreement did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

253. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

254. The Panel finds that Sotecni did not submit sufficient evidence to support its claim for contract losses. The only evidence provided by Sotecni is translated and untranslated copies of correspondence with the Italian Foreign Ministry and Italia Trading Service S.p.A., and the deferred payment agreement of 19 March 1987. Sotecni did not provide copies of the underlying contract and applications for payment, approved payment certificates, interim certificates, progress reports, invoices and actual payments received.

3. Recommendation

255. The Panel recommends no compensation for contract losses.

B. Recommendation for Sotecni

Table 28. RECOMMENDED COMPENSATION FOR SOTECNI

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	845,287	nil
Total	845,287	nil

256. Based on its findings regarding Sotecni's claim, the Panel recommends no compensation.

XIX. CLAIM OF RO "BIM" SV. NIKOLE

257. RO "BIM" Sv. Nikole ("Nikole") is a Macedonian state-owned enterprise that is involved in the production of bitumen based insulating materials for use in the building industry. Nikole seeks compensation in the amount of US$736,505 for contract losses and interest.

Table 29. NIKOLE'S CLAIM

Claim element	Claim amount (US$)
Contract losses	590,950
Interest	145,555
Total	736,505

A. Contract losses

1. Facts and contentions

258. Nikole entered into two contracts (the dates of which Nikole did not provide) with two other companies from the former Yugoslavia, Izolacija (the "buyer") and Elektrometal (the "exporter") for the supply of insulating building materials for two projects in Balaruz and Numanija in Iraq. The buyer was one of three subcontractors retained by the Federal Directorate for Supply and Procurement ("SDPR") in Belgrade. SDPR was the main contractor to Iraq for both projects.

259. All payments were made by Iraq directly to SDPR. SDPR transferred monies received from Iraq upon presentation of "a statement for completed operations" to the account of the buyer and the exporter. The buyer was responsible for payment of the amounts owed to Nikole for each delivery. Payment of some of the goods supplied by Nikole was covered by a deferred payments agreement concluded between Iraq and the former Socialist Federal Republic of Yugoslavia.

260. Under both contracts Nikole was obliged to deliver to Iraq 80 per cent of the insulating material before 31 December 1988 and the remaining 20 per cent during 1989. However, not all the goods were delivered by 1989. Nikole submitted copies of five invoices which relate to the export of insulating materials to Iraq in 1990. The invoices are dated from 1 June 1990 to 5 July 1990.

261. Nikole stated that it has suffered losses in respect of 3 tranches of export transactions dating from 11 August 1988 onwards. The first tranche of exports was delivered in 1988 and 1989 and amounted to US$824,000 in respect of which Nikole received payment of US$364,000, leaving a unpaid balance of US$460,000. The second tranche of exports was made in 1989 and amounted to US$96,000.00 of which Nikole received payment of US$48,000, leaving an unpaid balance of US$48,000. Finally, the third tranche of exports was delivered between 23 June and 2 August 1990 and amounted to US$82,950 for which Nikole received no payment.

262. Part of the first tranche was covered by deferred payments "decisions" made under Law 20/89 of the former Republic of Yugoslavia which allowed, inter alia, exporters of goods to Iraq an extension of time for bringing in foreign currency for exports made in 1988 and afforded some concessions to exporters who had not been paid.

263. In its original submission, Nikole attributed its losses in a general way to Iraq's invasion and occupation of Kuwait without specifying precisely how the losses arose. In its reply to the claim development letter, Nikole stated that because of Iraq's invasion and occupation of Kuwait, the trade embargo was imposed as a result of which payment of the outstanding amounts was rendered impossible.

264. As evidence of its contract losses, Nikole submitted copies of the relevant contracts, export customs declarations, "specifications", deferred payment decisions and international bills of freight, the latter of which are stamped by the shipper and the Iraqi consignee. In its reply to the claim development letter, Nikole has submitted copies of invoices no. 5 to 9 which relate to the exportation of goods to Iraq in 1990. It also submitted copies of Laws numbers 31/88 and 20/89 under which the deferred payment decisions were made together with further copies of such decisions.

2. Analysis and valuation

265. The Panel holds that in the case of contracts to which Iraq was not a party, claimants must provide specific proof that the failure of a debtor to pay was the direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate that a debtor was rendered unable to pay through insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait.

266. The Panel finds that the trade embargo and related measures, and the economic situation caused thereby, cannot be accepted as the basis for

compensation. Compensation will be provided to the extent that Iraq's unlawful invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which is separate and distinct from the trade embargo and related measures.

267. The Panel finds that Nikole did not demonstrate that its contract losses directly resulted from Iraq's invasion and occupation of Kuwait. Nikole did not demonstrate that the failure of the buyer (Izolacija) to pay was the direct result of Iraq's invasion and occupation of Kuwait nor did Nikole demonstrate that the buyer was rendered unable to pay through insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait. Nikole failed to establish that Iraq's invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which was separate and distinct from the trade embargo and related measures.

3. Recommendation

268. The Panel recommends no compensation for contract losses.

B. Interest on contract losses

269. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Nikole

Table 30. RECOMMENDED COMPENSATION FOR NIKOLE

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	590,950	nil
Interest	145,555	nil
Total	736,505	nil

270. Based on its findings regarding Nikole's claim, the Panel recommends no compensation.

XX. CLAIM OF SHEPPARD ROBSON

271. Sheppard Robson is a United Kingdom partnership providing architectural, planning and interior design services. Sheppard Robson seeks compensation in the amount of US$1,353,692 for contract losses.

272. Sheppard Robson received compensation from the United Kingdom's Export Credits Guarantee Department ("ECGD") for at least one of the projects for which it claims contract losses.

Table 31. SHEPPARD ROBSON'S CLAIM

Claim element	Claim amount (US$)
Contract losses	1,353,692
Total	1,353,692

A. Contract losses

1. Facts and contentions

273. Sheppard Robson's claim for contract losses relates to two separate projects in Iraq.

274. Sheppard Robson entered into a contract dated 7 September 1982 with the Amanat Al Assima for the provision of architectural services on the Naaish Khana Central Development project in Iraq. The final invoices were submitted by Sheppard Robson to the Iraqi employer on 25 April 1986, and 2 and 23 August 1986. These outstanding accounts totaled ID290,814 (US$935,093). Of this amount, ID 204,344 (US$657,055) had been approved and authorized for payment by the Iraqi employer but the Central Bank had not passed them for payment.

275. Sheppard Robson entered into a contract dated 2 May 1982 with the State Organization for Tourism for the provision of consultancy services relating to the refurbishment and extension of the Villa Harthiya (situated in the Baghdad palace). Sheppard Robson seeks compensation for two unpaid invoices both dated 3 December 1986 in the total amount of ID130,184.310 (US$418,599). Although a copy of the contract was not been provided, it would appear that Sheppard Robson's fee would be paid as a percentage of the value of the accepted tender. Following submission of the tenders, the Iraqi employer decided to form a committee of in-house professionals. The committee was to work for a figure 20 per cent less than the value of the

accepted tender. Sheppard Robson was requested to afford the Iraqi employer a pro rata reduction in its fees. There was some discussion between Sheppard Robson and the Iraqi employer concerning the latter's request for a 20 per cent reduction. Sheppard Robson alleged that these discussions concluded with an assurance that Sheppard Robson would be paid on the basis of an amount roughly equivalent to the value of the accepted tender.

276. The evidence provided by Sheppard Robson is copies of most of its invoices, correspondence with the United Kingdom's Export Credit Guarantees Department, and correspondence between the British Embassy in Baghdad and the Iraqi Ministry of Foreign Affairs, which includes an acknowledgment of debt by Iraq concerning the first project. Sheppard Robson did not provide a copy of either contract.

2. Analysis and valuation

277. The Panel finds that both contract losses stated by Sheppard Robson relate entirely to work that was performed prior to 2 May 1990. Accordingly, the claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

3. Recommendation

278. The Panel recommends no compensation for contract losses.

B. Recommendation for Sheppard Robson

Table 32. RECOMMENDED COMPENSATION FOR SHEPPARD ROBSON

Claim element	Claim amount US$)	Recommended compensation US$)
Contract losses	1,353,692	nil
Total	1,353,692	nil

279. Based on its findings regarding Sheppard Robson's claim, the Panel recommends no compensation.

XXI. RECOMMENDATIONS

280. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

a. Arthur Erickson Associates Ltd. (Canada): NIL;

b. General Arab Contracting Company (Arab Republic of Egypt): NIL;

c. General Nile Company for Contractings (Arab Republic of Egypt): NIL;

d. BRL (Compagnie Nationale D'Aménagement de la Région du Bas-Rhône et du Languedoc) (Republic of France): NIL;

e. SODETEG S.A. (Republic of France): NIL;

f. J.M. Voith (Federal Republic of Germany): NIL;

g. MCK Maschinenbau GmbH & Co. KG (Federal Republic of Germany): NIL;

h. Salzgitter Anlagenbau (Federal Republic of Germany): NIL;

i. Weidleplan Consulting GmbH (Federal Republic of Germany): NIL;

j. Asia Foundations & Constructions Ltd. (India): NIL;

k. Syndicate Engineering Co. (Bhilai) Private Ltd. (India): NIL;

l. Driplex Water Engineering (International) Limited (India): NIL;

m. Recondo Limited (India): NIL;

n. Triveni Structurals Ltd. (India): NIL;

o. Aurora Engineering (India): NIL;

p. Società Tecnica Internazionale SOTECNI S.p.A. (Italy): NIL;

q. RO "BIM" Sv. Nikole (Republic of Macedonia): NIL;

r. Sheppard Robson (United Kingdom of Great Britain and Northern Ireland): NIL.

Geneva, 29 June 1999

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner